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5 Attorneys for Defendant  
BECKETT MEDIA, LLC  
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7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**  
11

12 SUMMIT ENTERTAINMENT, LLC, a  
13 Delaware limited liability company

14 Plaintiff,

15 v.

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17 BECKETT MEDIA, LLC, a Delaware  
Corporation, and DOES 1-10, inclusive,

18 Defendants.  
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**CASE NO.: CV09-8161 PSG (MANx)**

**ANSWER OF DEFENDANT  
BECKETT MEDIA, LLC TO  
SECOND AMENDED COMPLAINT  
OF SUMMIT ENTERTAINMENT,  
LLC**

**[DEMAND FOR JURY TRIAL]**

Complaint filed November 6, 2009

1 Defendant Beckett Media, LLC ("Defendant"), for itself and for no other  
2 defendant, in response to the Second Amended Complaint of plaintiff Summit  
3 Entertainment, LLC ("Plaintiff") admits, alleges and denies as follows:

4 1. Admits that in Paragraph 1 Plaintiff has pled an Action that would meet  
5 the Jurisdictional requirements of this Court.

6 2. Admits that Paragraph 2 purports to set forth Plaintiff's legal contentions  
7 regarding "venue."

8 3. Denies for lack of sufficient knowledge or information each allegation in  
9 Paragraph 3.

10 4. Admits that Defendant is a Delaware Corporation that has a place of  
11 business in Anaheim, California.

12 5. Denies for lack of sufficient knowledge or information each allegation in  
13 Paragraph 5.

14 6. Denies for lack of sufficient knowledge or information each allegation in  
15 Paragraph 6.

16 7. Denies for lack of sufficient knowledge or information each allegation in  
17 Paragraph 7.

18 8. Denies for lack of sufficient knowledge or information each allegation in  
19 Paragraph 8.

20 9. Admits that Plaintiff was "involved in," and received credit, respecting  
21 the movies "*TWILIGHT*" and "*NEW MOON*" and except for those admissions, denies  
22 for lack of sufficient knowledge and information the remaining allegations in  
23 Paragraph 9, and asserts that the movies "*TWILIGHT*" and "*NEW MOON*" speak for  
24 themselves as to their respective content.

25 10. Denies for lack of sufficient knowledge or information to form a belief as  
26 to the truth of the averments in Paragraph 10.

1 11. Denies for lack of sufficient knowledge or information to form a belief as  
2 to the truth of the averments in Paragraph 11.

3 12. Deny for lack of sufficient knowledge or information each allegation in  
4 Paragraph 12.

5 13. Admits that, among other things, Defendant is a publisher of sports and  
6 entertainment collectibles and memorabilia magazines.

7 14. Admits that [i] Defendant's magazines are distributed in "various outlets  
8 throughout the United States" and [ii] Defendant operates a website at  
9 **www.beckett.com**, which speaks for itself as to its content.

10 15. Admits [i] that Defendant marketed one of its "Teen Sensations"  
11 magazines, containing, *inter alia*, reproductions of photographs and a poster (and  
12 asserts that the photographs and the poster speak for themselves as to their respective  
13 content), [ii] that the word "twilight" appears on the cover of the said magazine and  
14 [iii] that the figures "U.S. \$9.99" appear on the cover of said magazine and [iv] that  
15 Ex. A to Plaintiff's Complaint appears to be a copy of the said magazine, and, except  
16 as admitted, denies the remaining allegations in Paragraph 15.

17 16. Admits [i] that the Plaintiff has used the "font ... on the left" and [ii] that  
18 the Defendant has used the font "on the right," and, except as admitted, denies the  
19 remaining allegations in Paragraph 16.

20 17. Admits [i] that Defendant received a letter from Plaintiff on or about  
21 September 1, 2009 and that Ex. B to Plaintiff's Complaint appears to be a copy of that  
22 letter and [ii] that before Defendant was able to respond to said letter, Plaintiff sent a  
23 second letter to Defendant, and Ex. C to Plaintiff's Complaint appears to be a copy of  
24 that second letter (and asserts that the said letters speak for themselves as to their  
25 respective contents), and, except as admitted, denies the remaining allegations in  
26 Paragraph 17.

1           18. Admits that, in or about mid-to-late September, 2009, Defendant's  
2 counsel communicated with Plaintiff's counsel regarding the dispute that is the subject  
3 of this Action, but denies that the communications are accurately alleged in the  
4 Complaint herein and asserts that the contents of the communications are  
5 inadmissible, *inter alia*, under Fed. Rules of Evid, § 408.

6           19. Admits that in late September, 2009, Defendant's counsel contacted  
7 Plaintiff's counsel regarding the dispute that is the subject of this Action, but denies  
8 that the communications are accurately alleged in the Complaint herein and asserts  
9 that the contents of the communications are inadmissible, *inter alia*, under Fed. Rules  
10 of Evid, § 408.

11           20. Admits [i] that, in or about early October 2009, Defendant marketed  
12 another one of its "Teen Sensations" magazines, containing, *inter alia*, reproductions  
13 of photographs and a poster (and asserts that the photographs and the poster speak for  
14 themselves as to their respective content), [ii] that the word "twilight" appears on the  
15 cover of the said magazine, [iii] that the figures "U.S. \$9.99 • Can. \$14.99" appear on  
16 the cover of said magazine and [iv] that Ex. D to Plaintiff's Complaint appears to be a  
17 copy of the said magazine, and, except as admitted, denies the remaining allegations  
18 in Paragraph 20.

19           21. Admits [i] that in or about early October, 2009, Defendant's counsel  
20 advised Plaintiff's counsel [a] that Defendant's access to Plaintiff's "publicity"  
21 website at **www.summitpublicity.com** had been expressly authorized and approved  
22 by Plaintiff and [b] that Plaintiff's "publicity" website at [www.summitpublicity.com](http://www.summitpublicity.com)  
23 specifically provided downloadable photographs and other artwork relating to the said  
24 "Twilight Motion Pictures" for use(s) by those who were given access to said site by  
25 Plaintiff and Asserts that [iii] the website's "Terms of Use" and contents speaks for  
26 themselves, and otherwise denies the allegations of Paragraph 21 and specifically  
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1 denies that the Defendant's "use" of the said website was in any way inconsistent with  
2 the so-called "Terms of Use of the Website."

3 22. Admits [i] that it requested a password and permission to use the website  
4 for "newsstand magazine coverage" and [ii] that it was given by Plaintiff a password  
5 and permission to use Plaintiff's website, and Asserts that the "Terms of Use"  
6 regarding Plaintiff's website speak for itself as to its contents, and Acknowledges that  
7 a copy of the Terms of Use of Plaintiff's website appear to be attached as Ex. E to  
8 Plaintiff's Complaint, and, except as admitted, Denies the remaining allegations in  
9 Paragraph 22 and specifically denies that Defendant's "use" of Plaintiff's "website"  
10 was inconsistent with the so-called "Terms of Use" respecting the "website."

11 23. Denies the allegations in Paragraph 23, and specifically denies that  
12 Defendant's conduct "creates the false impression that Summit endorsed, licensed or  
13 sponsored" Defendant's magazine.

14 24. Defendant Admits that it created its said "Teen Sensations" magazine  
15 without Plaintiff's prior written approval and Asserts [i] that all "editing, altering  
16 and/or modifying [of] Summit's copyright material without Summit's prior written  
17 approval," if any, is and was a "fair use" under the United States Copyright  
18 Trademark Laws, Asserts that the said "material" speaks for itself as to its contents  
19 and, except as admitted, Denies the remaining allegations in Paragraph 24 and  
20 specifically denies that Defendant's "use" of Plaintiff's "website" was inconsistent  
21 with the so-called "Terms of Use" respecting the "website."

22 25. Denies that it has used any copyrighted or trademarked material owned  
23 by Plaintiff in any form or fashion that [i] was not expressly authorized by Plaintiff,  
24 [ii] was not protected by the First Amendment to the United States Constitution and/or  
25 [iii] was not a "fair use" under the United States Copyright and Trademark Laws and,  
26 except as admitted, Denies the remaining allegations in Paragraph 25.

1           26. Denies [i] that any of its actions were unlawful and, hence, that any of its  
2 actions, in that regard, were “willful” and/or [ii] that it was required to or sought a  
3 “license” from Plaintiff to publish its “Teen Sensations” magazines, and Admits [iii]  
4 that it utilized, in its “Teen Sensations” publications, materials that had been made  
5 available to it by Plaintiff and [iv] that it did not cease publishing its “Teen Sensation”  
6 magazines when Plaintiff complained, and Asserts [v] that the contents of the  
7 Defendant’s “Teen Sensations” magazines speak for themselves as to their respective  
8 contents and [vi] that Defendant does not intent to publish any “Twilight Fanzine[s]”  
9 as Defendant understands Plaintiff’s use of that terminology, but, except as admitted,  
10 denies, generally and specifically, each and every remaining allegation and/or  
11 contention set out in Paragraph 26.

12           27. Admits that, in or about October and November of 2009, it offered for  
13 sale on ebay printing plates for its “Teen Sensations” magazines and [ii] that copies of  
14 the e-bay listing and the listing on Defendant’s website for the printing plates appear  
15 to be attached collectively as Ex. F to Plaintiff’s Complaint.

16           28. Admits that Curtis nationally distributes magazines and that Beckett  
17 engaged Curtis to distribute its “Teen Sensation” magazines. Denies the remaining  
18 allegations in Paragraph 28 for lack of information.

19           29. Denies each allegation in Paragraph 29 for lack of information and  
20 knowledge.

21           30. Denies each allegation in Paragraph 30 for lack of information and  
22 knowledge.

23           31. Defendant repeats and realleges each and every allegation in Paragraphs  
24 1 through 30 above, as though fully set forth herein.

25           32. Defendant denies the contentions in Paragraph 32.

26           33. Defendant denies the contentions in Paragraph 33.

1 34. Defendant denies the contentions in Paragraph 34.

2 35. Defendant denies the contentions in Paragraph 35.

3 36. Defendant denies the contentions in Paragraph 36.

4 37. Defendant denies the contentions in Paragraph 37.

5 38. Defendant denies the contentions in Paragraph 38, but admits that  
6 15 U.S.C. § 1117 entitles the prevailing party, under certain circumstances and  
7 conditions, to an award of attorneys' fees and costs of suit in a copyright infringement  
8 action.

9 39. Defendant repeats and realleges each and every allegation / contention of  
10 Paragraphs 1 through 38, above, as though fully set forth herein.

11 40. Defendant denies the contentions in Paragraph 40.

12 41. Admits that Curtis distributed "Teen Sensation" magazines. Denies each  
13 remaining allegation in Paragraph 41 for lack of information and knowledge.

14 42. Defendant denies the contentions in Paragraph 42.

15 43. Defendant denies the contentions in Paragraph 43 and, specifically,  
16 denies that Plaintiff has suffered any damage or that it is entitled to an Injunction  
17 restraining Defendant from any acts.

18 44. Defendant generally denies the contentions of Paragraph 44, and  
19 specifically denies that Plaintiff is entitled to recover from Defendant any damages.

20 45. Defendant denies the contentions in Paragraph 45, and in addition,  
21 Defendant contends that Plaintiff is not entitled to any of Defendant's gains, profits,  
22 and advantages.

23 46. Defendant denies the contentions in Paragraph 46, and specifically denies  
24 that Plaintiff is entitled to an award of punitive damages or any damages at all.

25 47. Defendant repeats and realleges each and every allegation / contention of  
26 Paragraphs 1 through 46 above, as though fully set forth herein.

1           48. Defendant denies the contentions of Paragraph 48.

2           49. Defendant denies the contentions of Paragraph 49.

3           50. Defendant denies the contentions of Paragraph 50.

4           51. Defendant generally denies the contentions of Paragraph 51, and  
5 specifically denies that any of Defendant's acts are likely to damage Plaintiff and that  
6 Plaintiff is entitled to a Preliminary and/or Permanent Injunction enjoining Defendant  
7 from any acts or conduct in connection with the promotion, advertising and sale of  
8 any "goods" by Defendant.

9           52. Defendant generally denies the contentions of Paragraph 52, and  
10 specifically denies that Plaintiff is entitled to recover from Defendant any damages.

11           53. Defendant generally denies the contentions of Paragraph 53, and  
12 specifically denies that Plaintiff is entitled to recover from Defendant any "gains,  
13 profits, or advantages" Defendant has obtained as a result of its acts.

14           54. Defendant denies that Plaintiff is entitled to any of the remedies available  
15 under 15 U.S.C. § 1117 and/or § 1118.

16           55. Defendant repeats and realleges each and every allegation / contention of  
17 Paragraphs 1 through 54 above, as though fully set forth herein.

18           56. Defendant denies the contentions of Paragraph 56 regarding the Content,  
19 Photographs, and Poster Images, and asserts that the Photographs, Content, and Poster  
20 Images speak for themselves as to their content, and denies for lack of sufficient  
21 knowledge or information and belief that any of the Content, Photographs, or Poster  
22 Images are "original works of authorship owned by Summit."

23           57. Defendant denies for lack of sufficient knowledge or information and  
24 belief the contentions in Paragraph 57.

25           58. Defendant denies for lack of sufficient knowledge or information to form  
26 a belief as to the truth of the averments in Paragraph 58.



59. Defendant admits that Plaintiff maintains a website at [www.summitpublicity.com](http://www.summitpublicity.com), where various Content, Photographs and Poster Images are available for downloading and duplicating, and that anyone can access the website that [i] has an Internet connection and [ii] is authorized to do so by Plaintiff.

60. Defendant denies, generally and specially, the contentions in Paragraph 60.

61. Defendant generally denies the contentions in Paragraph 61 and specifically denies that it “was ... aware ... [that its publication of any of its “Teen Sensation” magazines] would constitute copyright infringement.”

62. Defendant generally and specially denies the contentions in Paragraph 62, except that Defendant admits that it did not cease publishing its “Teen Sensation” magazines or attempt to recall them immediately upon receipt by Beckett of a letter from Summit’s counsel contending that Beckett’s magazines “infringed [Summit’s] copyrights and trademark rights.”

63. Admits that Curtis distributed “Teen Sensation” magazines. Denies each remaining allegation in Paragraph 63 for lack of information and knowledge.

64. Defendant generally denies the contentions in Paragraph 64 and specifically denies that Plaintiff has suffered any damages and/or is entitled to recover any damages, including, without limitation, the “gains, profits and/or advantages” derived by Beckett from its publications and/or statutory damages under the Copyright Act of the United States.

65. Defendant denies the contentions of Paragraph 65.

66. Defendant repeats and realleges each and every allegation of Paragraphs 1 through 65, above, as though fully set forth herein.

67. Defendant denies the contentions of Paragraph 67, generally and specifically.



1           75. Plaintiff's Complaint fails to state facts sufficient to constitute a claim for  
2 relief against Defendant.

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4                           **SECOND AFFIRMATIVE DEFENSE**  
5                           **(17 U.S.C. § 412)**

6           76. To the extent Plaintiff has failed to comply with the provisions of  
7 17 U.S.C. § 412, Plaintiff's purported claims for relief are limited and/or barred.

8                           **THIRD AFFIRMATIVE DEFENSE**  
9                           **(17 U.S.C. § 411 (a))**

10          77. To the extent Plaintiff has failed to comply with the provisions of  
11 17 U.S.C. § 411 (a), Plaintiff's purported claims for relief are barred.

12                           **FOURTH AFFIRMATIVE DEFENSE**  
13                           **(Unclean Hands)**

14          78. Plaintiff's purported claims for relief are barred in whole or in part by  
15 reason of its unclean hands.

16                           **FIFTH AFFIRMATIVE DEFENSE**  
17                           **(Lack of Standing)**

18          79. Plaintiff's purported claims for relief are barred in whole or in part  
19 because of Plaintiff's lack of standing to prosecute its claims.

20                           **SIXTH AFFIRMATIVE DEFENSE**  
21                           **(Fair Use)**

22          80. To the extent any such "use" occurred, which Defendant denies, but here  
23 assumes merely for the sake of argument, Plaintiff's purported claims for relief are  
24 barred in whole or in part by the doctrine of fair use.

25                           **SEVENTH AFFIRMATIVE DEFENSE**  
26                           **(First Amendment)**  
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1           81. To the extent any such “use” occurred, which Defendant denies, but here  
2 assumes merely for the sake of argument, Plaintiff’s purported claims for relief are  
3 barred in whole or in part because the purported use of Plaintiff’s purportedly  
4 copyrightable materials constituted a use protected by the First Amendment to the  
5 United States Constitution.

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7                           **EIGHTH AFFIRMATIVE DEFENSE**  
8                           **(De Minimis Use)**

9           82. To the extent any such “use” occurred, which Defendant denies, but here  
10 assume merely for the sake of argument, Plaintiff’s purported claims for relief are  
11 barred in whole or in part by the doctrine of *de minimis* use.

12                           **NINTH AFFIRMATIVE DEFENSE**  
13                           **(No Willful Infringement)**

14           83. To the extent any such “use” occurred, which Defendant denies, but here  
15 assume merely for the sake of argument, Plaintiff’s purported claims for relief are  
16 barred in whole or in part because Defendant’s use was not willful.

17                           **TENTH AFFIRMATIVE DEFENSE**  
18                           **(Statue of Limitations)**

19           84. Plaintiff’s claim for relief is barred and limited by the provisions of  
20 17 U.S.C. § 507.

21  
22                           **ELEVENTH AFFIRMATIVE DEFENSE**  
23                           **(Protectability)**

24           85. To the extent that Plaintiff relied on facts or purported facts, ideas,  
25 scenes-a-faire, clichés and conventions of story telling, its claims are barred.

26                           **TWELFTH AFFIRMATIVE DEFENSE**  
27                           **(Laches)**

1           86. Plaintiff's purported claims and any prayer for relief based thereon or  
2 otherwise are barred by the doctrine of laches.

3  
4                           **THIRTEENTH AFFIRMATIVE DEFENSE**  
5                           **(Waiver)**

6           87. Plaintiff's purported claims and any prayer for relief based thereon or  
7 otherwise are barred by waiver.

8                           **FOURTEENTH AFFIRMATIVE DEFENSE**  
9                           **(Estoppel)**

10          88. Plaintiff's purported claims and any prayer for relief based thereon or  
11 otherwise are barred by the principle of estoppel.

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13                           **FIFTEENTH AFFIRMATIVE DEFENSE**  
14                           **(Consent)**

15          89. To the extent any such "use" occurred, which Defendant denies, but here  
16 assume merely for the sake of argument, Plaintiff's purported claim and any prayer for  
17 relief based thereon or otherwise are barred in whole or in part because Plaintiff  
18 expressly or impliedly consented to the complained of conduct.

19  
20                           **SIXTEENTH AFFIRMATIVE DEFENSE**  
21                           **(Failure to Mitigate)**

22          90. After the occurrence of the alleged loss and damage to Plaintiff, Plaintiff  
23 failed and refused to mitigate its damages, and by reason thereof, is barred from  
24 recovery from Defendant.

25                           **SEVENTEENTH AFFIRMATIVE DEFENSE**  
26                           **(Proof of Copying of Protectable Expression)**  
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1           91. The First Amendment to the United States Constitution requires that  
2 Plaintiff must prove by clear and convincing evidence that Defendant has copied  
3 protectible expression from Plaintiff's work.

4                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**  
5                                   **(Proof of Allocating Defendant's Profits)**

6           92. The First Amendment to the United States Constitution requires that  
7 Plaintiff, not Defendant, must meet its burden of proving by clear and convincing  
8 evidence that proportion, if any, of Defendant's profits that is allocable to the alleged  
9 infringement by Defendant.

10                                   **NINETEENTH AFFIRMATIVE DEFENSE**  
11                                   **(License)**

12           93. To the extent any such "use" occurred, which Defendant denies, but here  
13 assume merely for the sake of argument, Plaintiff's purported claim and any prayer for  
14 relief based thereon or otherwise are barred in whole or in part because Plaintiff  
15 expressly or impliedly granted a license to the complained of conduct.

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1 WHEREFORE, Defendant prays as follows:

2 1. That the Complaint be dismissed with prejudice and that Plaintiff take  
3 nothing herein;

4 2. That Defendant be awarded its costs of suit, including its reasonable  
5 attorneys' fees, incurred in defense of this action; and

6 3. That Defendant be awarded such other and further relief as the Court may  
7 deem just and proper.

8  
9 DATED: July 30, 2010

LEOPOLD, PETRICH & SMITH  
A Professional Corporation

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11  
12 By: /s/ - Nicholas Morgan

13 Joel McCabe Smith  
14 Nicholas Morgan  
Attorneys for Defendant  
Beckett Media, LLC  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274.**

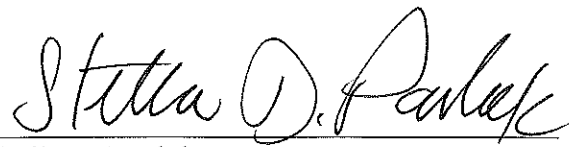
On July 30, 2010, I served the foregoing document described as ANSWER OF BECKETT MEDIA, LLC TO SECOND AMENDED COMPLAINT OF SUMMIT ENTERTAINMENT, LLC [DEMAND FOR JURY TRIAL] on the interested parties in this action.

- ☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

**SEE ATTACHED SERVICE LIST**

- ☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- ☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Federal Express Drop Box located at 2049 Century Park East, Suite 3110, Los Angeles, California 90067-3274. The envelope was deposited with delivery fees thereon fully prepaid.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- ☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2010, at Los Angeles, California.

  
Stella D. Pavluk



**SERVICE LIST**

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